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EXAMINER
HARRIS, CHANDA L

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3714	5

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/934,774	Applicant(s) STANFIELD ET AL.	
	Examiner Chanda L. Harris	Art Unit 3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *21 August 2001 and 16 October 2001* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-30* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-30* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Specification

The disclosure is objected to because of the following informalities: The Cross Reference to Related Applications on p.1 of the Specification needs to be updated with the applications' serial numbers.

Appropriate correction is required.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-10,12-18, and 30 are rejected under 35 U.S.C. 101 because the Claimed invention is directed to non-statutory subject matter.

The basis of this rejection is set forth in a two-prong test of:

(1) whether the invention is within the technological arts; and

(2) whether the invention produces a useful, concrete, and tangible result.

For a Claimed invention to be statutory, the Claimed invention must be within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the "progress of science and the useful arts" (i.e., the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory

subject matter. For a process Claim to pass muster, the recited process must somehow apply, involve, use, or advance the technological arts.

In the present case, Claims 1-10 and 12-18 only recite an abstract idea. The recited steps of merely rendering definitional classification information, an expert assigning a value to a media entity followed by a trainee assigning a value to a media entity, making a comparison between the values and determining what a trainee is qualified to code, does not apply, involve, use, or advance the technological arts since all of the recited steps can be performed in the mind of the user or by use of a pencil and paper. These steps only constitute an idea of how to determine what type of information a trainee is qualified to code.

Additionally, for a Claimed invention to be statutory, the Claimed invention must produce a useful, concrete, and tangible result. In the present case, the Claimed invention compares a trainee-assigned value with an expert-assigned value (i.e., repeatable) used in determining what type of information a trainee is qualified to code (i.e., useful and tangible).

Although the recited process produces a useful, concrete, and tangible result, since the Claimed invention, as a whole, is not within the technological arts as explained above, Claims 1-10 and 12-18 are deemed to be directed to non-statutory subject matter.

In the present case, Claim 30 provides a trainee with a list of fundamental music properties, written definitions, a list of song examples organized by classification level and plays the song examples to the trainee and a previously trained listener, permitting

the trainee and the previously trained listener to code the songs, and comparing their results (i.e. useful and concrete). Tangibility is evidenced by, but not limited to, a real or actual effect. Claim 30 does not result in a real or actual effect. What happens as a consequence of performing steps a-j or at least step j?

Claim Objections

1. Claims 1-3,12-13,16,18,24 are objected to because of the following informalities:

- Claim 1, lines 10-11: "values" should be "value".
- Claim 1, line 13: "properties" should be "property".
- Claim 2, lines 2-3: "values" should be "value".
- Claim 3, line 2: "properties" should be "property".
- Claims 12-13, lines 2-3: "values" should be "value".
- Claim 16, line 2: "properties" should be "property".
- Claim 18, line 1: There appears to be a word missing between "example" and "at least one".
- Claim 24, line 3: "values" should be "value".

Appropriate correction is required.

2. Claims 19-21 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous Claim. Applicant is required to cancel the Claim(s), or amend the Claim(s) to place the Claim(s)

in proper dependent form, or rewrite the Claim(s) in independent form and pay the appropriate fees.

- Claim 19 discloses a computer-readable medium bearing computer-executable instructions for carrying out the method of Claim 1. However, the computer-readable medium bearing computer-executable instructions of Claim 19 does not further limit the method of Claim 1.
- Claim 20 discloses a modulated data signal carrying computer-executable instructions for carrying out the method of Claim 1. However, modulated data signal carrying computer-executable instructions of Claim 20 does not further limit the method of Claim 1.
- Claim 21 discloses a computer device comprising means for performing the method of Claim 1. However, the computer device of Claim 21 does not further limit the method of Claim 1.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 11-13, 16, 19-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Romano et al. (US 5,991,595).

1. [Claim 1]: Regarding Claim 1, Romano discloses rendering

definitional classification information (e.g. scoring guides, topic annotations, benchmark CRs, etc.) to the trainee to educate the trainee as to the nature of said at least one fundamental property. See Col.8: 47-51, 65-Col.9: 1. It is an inherent feature of Romano that the constructed responses would be scored according to some fundamental property, hence the use of the scoring guide by the raters. Romano discloses first assigning by at least one expert at least one expert-assigned value to said at least one fundamental property of the media entity (i.e. predetermined or qualified scores). See Col.13: 66-Col.14: 1. Romano discloses second assigning by said trainee at least one trainee-assigned value to said at least one fundamental property of the media entity (i.e. CR) after said rendering, said at least one trainee-assigned value equal in number to said at least one expert-assigned value (i.e. a rater passing the certification test). See Col.14: 1-11. Romano discloses comparing the at least one trainee-assigned value to the corresponding at least one expert-assigned value. See Col.13: 66-Col.14: 1. Romano discloses determining based on said comparing a first group (i.e. certification CRs) of said at least one fundamental property for which said trainee is qualified to code values for new media entities (e.g. from trainee to certified). See Col.12: 26-36 and Col.14: 11.

2. [Claim 2]: Regarding Claim 2, Romano discloses wherein said comparing includes comparing, value by value, the at least one trainee-assigned value to the corresponding at least one expert-assigned value. See Col.13: 66-Col.14: 1.

3. [Claim 3]: Regarding Claim 3, Romano discloses determining based on said comparing a second group of said at least one fundamental property for which said

trainee is not qualified to code values for new media entities (i.e. not passing the test, cannot read and score production essays). See Col.9: 58-61 and Col.14: 9-11.

4. [Claim 4]: Regarding Claim 4, Romano discloses redoing the rendering, first assigning, second assigning, comparing and determining for fundamental properties of the second group until all properties in said second group are in said first group (i.e. passing a certification test, can read and score production essays). See Col.9: 58-61.

5. [Claim 11]: Regarding Claim 11, Romano discloses wherein said rendering includes rendering said definitional classification information to the trainee via the Web (i.e. Internet). See Col.6: 49-58.

6. [Claim 12]: Regarding Claim 12, Romano discloses wherein said comparing includes performing statistical analysis (i.e. performance statistics) on said at least one trainee-assigned value and said at least one expert-assigned value (i.e. a score given by another rater). See Col.19: 16-29.

7. [Claim 13]: Regarding Claim 13, Romano discloses wherein said comparing includes calculating correlations between said at least one trainee-assigned value and said at least one expert-assigned value (e.g. the total number of essays with scores exactly equal to the score given by another rater). See Col.19: 16-29.

8. [Claim 16]: Regarding Claim 16, Romano discloses wherein said trainee is authorized to code new media entities for said first group of said at least one fundamental property (e.g. from trainee to certified, can read and score production essays). See Col.9: 60-61, Col.12: 29-31, and Col.14: 6-8.

9. [Claim 19]: Regarding Claim 19, Romano discloses a computer readable medium

(i.e. a suitable hard drive) bearing computer executable instructions for carrying out the method of Claim 1. See Col.7: 57-60.

10. [Claim 20]: Regarding Claim 21, Romano discloses a modulated data signal (i.e. means for communication) carrying computer executable instructions for performing the method of Claim 1. See Col.7: 61-63.

11. [Claim 21]: Regarding Claim 21, Romano discloses a computing device (i.e. personal computer) comprising means for performing the method of Claim 1. See Col.7: 3-9.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 5-10, 14-15, 17, 22-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Romano.

1. [Claim 5]: Regarding Claim 5, Romano does not disclose expressly wherein when all fundamental properties are in said first group, said trainee is a groover for all fundamental properties. However, Romano teaches being promoted to different statuses such as certified, experienced, or scoring leader. See Col.9: 47-48. It would have been obvious to one of ordinary skill in the art that Romano's invention can be

adapted to different applications such as music. Further, at the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to adapt Romano's invention to a music application because Applicant has not disclosed that a groover provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with statuses such as certified, experienced, or scoring leader because both ways of indicating status perform the same function of indicating the tasks that a trainee is qualified to do. Therefore, it would have been an obvious matter of design choice to modify Romano to obtain the invention as specified in Claim 5.

2. [Claim 6]: Regarding Claim 6, Romano does not disclose expressly wherein the media entities are one of songs and song segments. However, Romano teaches wherein the media entities are constructed responses. It would have been obvious to one of ordinary skill in the art that Romano's invention can be adapted to assigning/scoring songs. Further, at the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to adapt Romano's invention to assigning/scoring songs because Applicant has not disclosed that songs and song segments provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with essays or constructed responses because both are media entities that lend themselves to assigning/classifying/scoring. Therefore, it would have been an obvious matter of

design choice to modify Romano to obtain the invention as specified in Claim 6.

3. [Claims 7-10]: Regarding Claims 7-10, Romano does not disclose expressly wherein said definitional information includes definitional information about rhythm, zing, and mood; wherein said definitional information for rhythm comprises definitional information for tempo, a time signature, rhythm description, rhythm type and rhythmic activity; wherein said definitional information for zing comprises definitional information for consonance, density, melodic movement and weight; wherein said definitional information for mood comprises definitional information for emotional intensity, mood and mood description. However, Romano teaches definitional information such as scoring guides, topic annotations, and benchmark CRs in Col.8: 47-49. It would have been obvious to one of ordinary skill in the art that Romano's invention can be adapted to provide definitional information as it pertains to songs. Further, at the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to adapt Romano's invention to definitional information as it pertains to songs because Applicant has not disclosed that defintional information about rhythm, zing, and mood provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with definitional information such as scoring guides, topic annotations, and benchmark CRs because both types of definitional information perform the same function of aiding the trainee in classifying information. Therefore, it would have been an obvious matter of design choice to modify Romano to obtain the invention as specified in Claims 7-10.

4. [Claim 14]: Regarding Claim 14, Romano does not disclose expressly wherein said comparing includes at 1) taking a batch of songs and calculating correlation scores across a set of specified fundamental properties (e.g. for each topic, the total number of essays with scores exactly equal to the score given by another rater) 2) taking a batch of songs and calculating the percentage of songs in which the expert raters and trainee are within plus/minus one classification scaling from each other across a set of specified fundamental properties (for each topic, the number of essays given scores adjacent to the scores given by another rater) and 3) examining song-by-song every property for that song (e.g. via scoring guide), with co-listening and discussion of what is heard via the definition parameters provided for each fundamental property (i.e. adjudication). However, Romano teaches equivalents as applied to essays in Col.9: 10-20 and Col.19: 16-29. It would have been obvious to one of ordinary skill in the art that such comparing can be applied to songs. Further, at the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to apply Romano's invention to songs because Applicant has not disclosed that songs provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with essays or constructed responses because both media types lend themselves to the aforementioned comparing. Therefore, it would have been an obvious matter of design choice to modify Romano to obtain the invention as specified in Claim 14.

5. [Claim 15]: Regarding Claim 15, Romano discloses wherein said comparing includes

at least one of comparing with a statistical analysis (i.e. performance statistics) and comparing with a non-statistical analysis (e.g. comparing the scores to predetermined or qualified scores). See Col.13: 66-Col.14: 1 and Col.19: 16-29.

6. [Claim 17]: Regarding Claim 17, Romano does not disclose expressly wherein said rendering of said definitional information includes rendering at least one of a song segment and song (i.e. benchmark and rangefinder CRs) to said trainee, said at least one of a song segment and song serving as at least one example of said at least one fundamental property. However, he teaches an equivalent as is applied to essays. See Col.8: 61-64. It would have been obvious to one of ordinary skill in the art that such rendering can be applied to songs. Further, at the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to apply rendering of a song segment and song into Romano's invention because Applicant has not disclosed that the rendering of a song segment and song provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art would have expected Applicant's invention to perform equally well with benchmark and rangefinder CRs because both types of definitional information performs the same function of aiding the trainee in classifying/scoring/assigning information. Therefore, it would have been an obvious matter of design choice to modify Romano to obtain the invention as specified in Claim 17.

7. [Claims 22-23]: Regarding Claims 22 and 23, Romano discloses a computing device (e.g. personal computer). See Col.7: 3-10. Romano discloses wherein the computing device includes a display (i.e. a monitor) for rendering definitional classification

information to the trainee to educate the trainee as to the nature of at least one property. See Col.7: 18-23. Romano discloses an audio rendering means (i.e. an audio device) for rendering to said trainee. See Col.7: 18-23. Romano discloses means for receiving from a trainee classification data (i.e. scoring data) for classifying (i.e. scoring) and means for analyzing said classification data (i.e. comparison). See Col.13: 66-Col.14: 4. Romano discloses means for determining whether said trainee is qualified to enter classification data for said at least one fundamental property. See Col.13: 66-Col.14: 4. Romano discloses wherein said means for analyzing includes means for comparing said classification data (i.e. scoring data) to known classification data (e.g. via scoring guide). See Col.8: 47-51.

Romano does not disclose expressly at least one fundamental music property and song segments or songs. However, it would have been obvious to one of ordinary skill in the art that Romano's invention can be equally applied to music and songs. Further, at the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to apply Romano's invention to music and songs because Applicant has not disclosed that music and songs provide an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with essays or constructed responses because both media types lend themselves to classifying/scoring/assigning. Therefore, it would have been an obvious matter of design choice to modify Romano to obtain the invention as specified in Claims 22-23.

8. [Claim 24]: Regarding Claim 24, Romano discloses wherein said comparing includes performing statistical analysis (i.e. performance statistics) on said at least one trainee-assigned value and said at least one expert-assigned value (i.e. a score given by another rater). See Col.19: 16-29.

9. [Claim 25]: Regarding Claim 25, Romano discloses wherein said comparing includes calculating correlations between said at least one trainee-assigned value and said at least one expert-assigned value (e.g. the total number of essays with scores exactly equal to the score given by another rater). See Col.19: 16-29.

10.[Claims 26-29]: Regarding Claims 26-29, Romano does not disclose expressly wherein said definitional information includes definitional information about rhythm, zing, and mood; wherein said definitional information for rhythm comprises definitional information for tempo, a time signature, rhythm description, rhythm type and rhythmic activity; wherein said definitional information for zing comprises definitional information for consonance, density, melodic movement and weight; wherein said definitional information for mood comprises definitional information for emotional intensity, mood and mood description. However, Romano teaches definitional information such as scoring guides, topic annotations, and benchmark CRs in Col.8: 47-49. It would have been obvious to one of ordinary skill in the art that Romano's invention can be adapted to provide definitional information as it pertains to songs. Further, at the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to adapt Romano's invention to provide definitional information as it pertains to songs because Applicant has not disclosed that definitional information

pertaining to songs provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well definitional information pertaining to essays or constructed responses because both types of definitional information perform the same function of aiding the trainee in classifying/assigning/scoring media. Therefore, it would have been an obvious matter of design choice to modify Romano to obtain the invention as specified in Claims 26-29.

Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Romano in view of Flannery et al. (US 6,545,209).

[Claim 18]: Regarding Claim 18, Romano does not disclose expressly wherein said example of at least one of a song segment and songs are selected from a playlist generating engine capable of matching songs to the at least one fundamental property. Romano does teach selecting a certification CR from a pool of certification CRs in Col.13: 39-44 which can be considered an equivalent to selecting songs from a playlist. Further, Flannery teaches a playlist generating engine capable of matching songs to the at least one fundamental property in Col.4: 31-39. It would have been obvious to one of ordinary skill in the art that such selecting can be applied to songs. Further, at the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to apply Romano's invention to songs because Applicant has not disclosed that song and song segments provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the

art, furthermore, would have expected Applicant's invention to perform equally well with essays or constructed responses because both media types lend themselves to selecting from a list. Further, at the time of the invention, it would have been obvious to incorporate a playlist generating engine into the method and system of Romano, in light of the teaching of Flannery, in order to provide of way of associating closely related and/or similarly situated media entities. In addition, it would have been an obvious matter of design choice to modify Romano/Flannery to obtain the invention as specified in Claim 18.

Citation of Pertinent Prior Art

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Gjerdingen et al. (US 6,539,395)

-comparing music

- Jongsma et al. (US 6,267,601)

-model score

- Poor (US 5,672,060)

-qualifying for scoring

- Bhandari et al. (US 2001/0034730)

-data-driven self-training system

- Castelli et al. (US 6,298,351)

-supervised classification

- Gustman (US 5,832,495)

-cataloging multimedia data

- Dwek (US 6,248,946)

-multimedia content delivery system

- Yourlo (US 6,201,176)

-music database

- Cluts (US 5,616,876)

-selecting music

- Leight et al. (US 6,446,083)

-classifying media items

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chanda L. Harris whose telephone number is 703-308-8358. The examiner can normally be reached on M-F 6:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Hughes can be reached on 703-308-1806. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

Chanda L. Harris

Chanda L. Harris
Examiner
Art Unit 3714